



October 16, 2002

Mr. W. Lane Lanford
Executive Director
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711

OR2002-5876

Dear Mr. Lanford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170755.

The Public Utility Commission of Texas (the "commission") received a request for ten categories of information related to pay telephone registration and usage. You state that you will release a portion of the responsive information to the requestor. Further, you state that you will withhold the pay telephone location lists that were received by the commission from Extra Effort Payphones, Inc., from April 11, 1996, through February 11, 1998, in accordance with Open Records Letter No. 98-1955 (1998). In regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that you must continue to rely on Open Records Letter No. 98-1955 as a previous determination and withhold this information in accordance with Open Records Letter No. 98-1955. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Additionally, you claim that a portion of the requested information, Exhibits X, Y, and Z, is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also state that the information in Exhibits AA through SS may be subject to third-party confidentiality claims. Thus, you have notified the twenty-two interested third parties of the request for information and of their opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why

requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

In regard to Exhibits Y and Z, you raise section 552.101 of the Government Code in conjunction with section 56.024 of the Utilities Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 56.024 of the Utilities Code provides as follows:

(a) The commission may require a telecommunications provider to provide a report or information necessary to assess contributions and disbursements to the universal service fund.

(b) A report or information is confidential and not subject to disclosure under Chapter 552, Government Code.

You indicate that the information contained in Exhibits Y and Z consists of the monthly reports made by telecommunications providers that allow the commission to assess contributions to and disbursements from the Texas Universal Service Fund. Upon review of your arguments and the submitted information, we agree that Exhibits Y and Z are confidential pursuant to section 56.024 of the Utilities Code and must be withheld under section 552.101 of the Government Code.¹

In regard to Exhibit X, you raise section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does

¹As we are able to make this determination, we need not address your arguments regarding section 151.027 of the Tax Code or the arguments submitted to this office by Verizon Wireless and GTE Southwest Incorporated d/b/a Verizon Southwest.

not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). Having reviewed the information at issue, we conclude that portions of Exhibit X consist of advice, opinions, recommendations, or other material reflecting the policymaking processes of the governmental body. Therefore, you may withhold the information we have marked under section 552.111 of the Government Code. However, the remainder of Exhibit X consists of purely factual information that is not excepted from disclosure under section 552.111 and must be released.

Finally, in regard to the remaining submitted information, Exhibits AA through SS, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, none of the interested third parties has submitted to this office any reasons explaining why their information should not be released. Therefore, these parties have provided us with no basis to conclude that they have a protected proprietary interest in these Exhibits. *See, e.g.,* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, Exhibits AA through SS must be released.

In summary, we conclude that: 1) Exhibits Y and Z are confidential pursuant to section 56.024 of the Utilities Code and must be withheld under section 552.101; and 2) you may withhold the information we have marked in Exhibit X under section 552.111. All remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



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Open Records Division

WMM/sdk

Ref: ID# 170755

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